

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Premier Low Voltage, et al.,

Plaintiffs,

v.

Case No.: 14-14578

Automated Controls & Engineering, LLC,  
et al.,

Honorable Sean F. Cox

Defendants.

---

**ORDER STRIKING DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO  
STATE A CLAIM OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE  
STATEMENT**

Plaintiffs filed this action on December 3, 2014, asserting civil RICO and other fraud-related claims against Defendants. (Complaint, Doc. #1).

On July 28, 2015 at 3:53 p.m., Defendants James L. Carey ("Carey) and Automated Controls & Engineering, LLC ("ACE") filed an Answer to Plaintiffs' Complaint. (Answer, Doc. #25). Also on July 28, 2015, at 3:56 p.m., Defendants Carey and ACE filed a joint "Motion to Dismiss or to Make More Definite and Certain." (Mo. to Dismiss, Doc. #26).

In their motion to dismiss, Carey and ACE argue that 1) Plaintiffs' Complaint should be dismissed pursuant to Civil Rule 12(b)(6) because Plaintiffs have failed to state a claim upon which relief may be granted, and 2) in the alternative, "Plaintiffs should be ordered to file an amended complaint making their allegations . . . more definite and certain as to the ACE Defendants." (Defs.' Motion at 2-3).

Carey and ACE's motion is premised, in part, on Civil Rule 12(b). Civil Rule 12(b) provides, in pertinent part:

- (b) **How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

. . . .

- (6) failure to state a claim upon which relief may be granted.

A motion asserting any of these defenses *must be made before pleading* if a responsive pleading is allowed . . . .

Fed. R. Civ. P. 12(b)(6) (emphasis added).

Carey and ACE's motion is also premised, in part, on Civil Rule 12(e). It provides, in pertinent part:

- (e) **Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. *The motion must be made before filing a responsive pleading* and must point out the defects complained of and the details desired . . . .

Fed. R. Civ. P. 12(e) (emphasis added).

Defendants filed their "Motion to Dismiss or to Make More Definite and Certain" on July 28, 2015, (Doc. #26), approximately three minutes after they filed their Answer to Plaintiff's Complaint. (Doc. #25). Therefore, Defendants did not file their Motion to Dismiss "before pleading," as required by Civil Rule 12(b). Further, Defendants did not move for a more definite statement "before filing a responsive pleading," as required by Civil Rule 12(e). Accordingly, the Court shall STRIKE Defendants' Motion to Dismiss or to Make More Definite and Certain (Doc. #26) for failure to comply with Federal Rules of Civil Procedure 12(b) and 12(e).

**IT IS SO ORDERED.**

Dated: August 26, 2015

S/Sean F. Cox  
Sean F. Cox  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Premier Low Voltage, et al.,

Plaintiffs,

v.

Case No.: 14-14578

Automated Controls & Engineering, LLC,  
et al.,

Honorable Sean F. Cox

Defendants.

---

PROOF OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record  
on August 26, 2015, by electronic and/or ordinary mail.

S/Jennifer McCoy  
Case Manager